

1 THE HONORABLE JOHN C. COUGHENOUR  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 RHETT TAYLOR and LAURIE TAYLOR,

11 Plaintiffs,

12 v.

13 PNC BANK, NATIONAL ASSOCIATION,

14 Defendant.

CASE NO. C19-1142-JCC

ORDER

15 This matter comes before the Court on Plaintiffs' motion for attorney fees (Dkt. No. 46).  
16 Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral  
17 argument unnecessary and hereby GRANTS Plaintiffs' motion in part for the reasons explained  
18 herein.

19 **I. BACKGROUND**

20 Plaintiffs previously brought a quiet title claim against Defendant, the owner of their  
21 home equity line of credit, which was secured by a deed of trust. (Dkt. No. 16.) The Court  
22 granted summary judgment to Plaintiffs in this quiet title action based on the Court's holding that  
23 Defendant's efforts to enforce the deed of trust were time-barred. (Dkt. No. 44 at 5–6.) Plaintiffs  
24 now move for attorney fees and costs in this matter. (Dkt. No. 46.) The Court has set forth the  
25 facts of this case in prior orders and will not repeat them here. (See Dkt. Nos. 13, 44.)

26 //

1       **II. DISCUSSION**

2           **A. Motion for Attorney Fees**

3           In general, parties bear their own attorney fees. *See Fed. R. Civ. P. 54(d)(2); MRO*  
 4           *Commc’ns., Inc. v. AT&T Co.*, 197 F.3d 1276, 1281 (9th Cir. 1999). However, Washington law  
 5           provides that when an action is brought on a contract that contains a unilateral attorney fee  
 6           provision, the fee provision becomes bilateral. Wash. Rev. Code § 4.84.330. “The statute ensures  
 7           that no party will be deterred from bringing an action on a contract or lease for fear of triggering  
 8           a one-sided fee provision. It does so by expressly awarding fees to the prevailing party in a  
 9           contract action.” *Wachovia SBA Lending, Inc. v. Kraft*, 200 P.3d 683, 686–87 (Wash. 2009). The  
 10          prevailing party is the one “in whose favor final judgment is entered.” Wash. Rev. Code  
 11          § 4.84.330. For this provision to apply, it is essential that the court find the action was brought  
 12          “on a contract.” *Hemenway v. Miller*, 807 P.2d 863, 873 (Wash. 1991).

13           To determine whether an action was brought “on a contract,” courts in Washington ask  
 14          whether “the contract containing the attorney fee provision [wa]s central to the controversy.” *Id.*  
 15          A proceeding on the enforceability of a deed of trust is an action on a contract. *Bingham v.*  
 16          *Lechner*, 45 P.3d 562, 569 (Wash. App. 2002). There is no dispute that the deed of trust in this  
 17          case contained a unilateral attorney fee provision. (*See* Dkt. No. 48-3 at 5; *see generally* Dkt. No.  
 18          55.) At issue is whether Plaintiffs’ quiet title action was brought “on a contract.” *Hemenway* 807  
 19          P.2d at 873.

20           Plaintiffs argue that the “*central issue* of this case was the enforceability of Defendant’s  
 21          deed of trust.” (Dkt. No. 46 at 4 (emphasis added).) Defendants argue otherwise, asserting the  
 22          deed of trust “provided the background for [Plaintiffs’] claim but nothing in the document  
 23          affected the outcome.” (Dkt. No. 55.) Plaintiffs have the better argument, particularly in light of  
 24          this Court’s decision in *Hernandez v. Franklin Credit Mgmt. Corp.*, 2020 WL 583814, slip op.  
 25          (W.D. Wash. 2020). That case, like this one, dealt with the enforcement of an otherwise time-  
 26          barred deed of trust. *Id.* at 1. For the same reasons that the Court found in *Hernandez* that the

1 plaintiff's claims were brought on a contract, the Court finds in this instance that Plaintiffs'  
 2 claims are brought on a contract. *See id.* at 1–2.

3 Plaintiffs' motion for attorney fees and costs (Dkt. No. 46) is hereby GRANTED.

4 **B. Calculation of Reasonable Fees**

5 Plaintiffs seek \$31,845 in attorney fees and \$525 in costs. (Dkt. No. 57 at 7.) Defendant  
 6 challenges those fees, alleging that Plaintiffs' counsel spent (a) excessive time responding to  
 7 Defendant's motion to dismiss, (b) unnecessary time filing and defending a meritless motion to  
 8 strike Defendant's affirmative defenses, and (c) an unreasonable amount of time on discovery.  
 9 (See generally Dkt. No. 55 at 4–8.) A district court employs a two-step process to calculate a  
 10 reasonable fee award. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the  
 11 court calculates the lodestar figure, which represents the number of hours reasonably expended  
 12 on the litigation multiplied by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433  
 13 (1983). Second, the court determines whether to increase or reduce that figure based on several  
 14 factors that are not subsumed in the lodestar calculation. *See Kelly v. Wengler*, 822 F.3d 1085,  
 15 1099 (9th Cir. 2016); see also *Kerr v. Screen Guild Extras, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

16 To determine a reasonable billing rate, the court generally looks to “the forum in which  
 17 the district court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). The  
 18 presumptive reasonable hourly rate for an attorney is the rate the attorney charges. *Broyles v.*  
 19 *Thurston Cty.*, 195 P.3d 985, 1004 (Wash. Ct. App. 2008). “The number of hours to be  
 20 compensated is calculated by considering whether, in light of the circumstances, the time could  
 21 reasonably have been billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106,  
 22 1111 (9th Cir. 2008). A court should exclude from the lodestar amount hours that are not  
 23 reasonably expended because they are “excessive, redundant, or otherwise unnecessary.”  
 24 *Hensley*, 461 U.S. at 434. There is a “strong presumption” that the lodestar figure represents the  
 25 reasonable fee award. *Dague*, 505 U.S. at 562.

26 Counsel's hourly rates are in line with similarly-situated attorneys; the Court finds them

1 to be reasonable. *See Camacho*, 523 F.3d at 979; *Broyles*, 195 P.3d at 1004. As to the time spent  
 2 responding to Defendant's motion to dismiss, the Court agrees that, given the nature of  
 3 Plaintiffs' briefing, 20.6 hours was excessive. The Court will exclude 10.3 hours or \$3,605 in  
 4 fees. Regarding the time spent on Plaintiffs' motion to strike, the Court finds Plaintiffs' actions  
 5 were reasonable, even if unsuccessful. *See People Who Care v. Rockford Bd. of Educ., Sch. Dist.*  
 6 No. 205, 90 F.3d 1307, 1314 (7th Cir. 1996) (The success or failure of a plaintiff's actions is not  
 7 controlling; rather, the controlling consideration is whether those actions were reasonable).  
 8 Finally, with respect to the time spent on discovery, the Court does not view the six<sup>1</sup> hours spent  
 9 on discovery as excessive even though the case ultimately turned on a question of law, given the  
 10 circumstances of this case.

11 The factors set forth in *Kerr* to evaluate the reasonableness of requested fees are:

12 (1) the time and labor required, (2) the novelty and difficulty of the questions  
 13 involved, (3) the skill requisite to perform the legal service properly, (4) the  
 14 preclusion of other employment by the attorney due to acceptance of the case, (5) the  
 15 customary fee, (6) whether the fee is fixed or contingent, (7) time limitations  
 16 imposed by the client or the circumstances, (8) the amount involved and the results  
 17 obtained, (9) the experience, reputation, and ability of the attorneys, (10) the  
 18 "undesirability" of the case, (11) the nature and length of the professional  
 19 relationship with the client, and (12) awards in similar cases.

20 526 F.2d at 70. None of the factors suggest a further adjustment is necessary in this  
 21 instance.

22 Having thoroughly reviewed the time entries set forth in Plaintiffs' declaration (Dkt. No.  
 23 48-1), along with the additional time spent in replying to Defendant's opposition to Plaintiffs'  
 24 motion (Dkt. No. 57 at 6), the Court finds that 79.7<sup>2</sup> hours constitutes reasonable time for  
 25 Plaintiffs' counsel to have worked on this proceeding. The Court similarly finds the resulting

---

26 <sup>1</sup> Six hours is the amount of time spent *after* subtracting 2.5 hours incurred on March 29,  
 27 2020, which Plaintiffs have conceded was excessive. (Dkt. Nos. 48-1 at 5, 57 at 5.)

<sup>2</sup> This figure is derived as follows: 87.2 hours (Dkt. No. 48-1 at 7), plus 5.3 hours (Dkt.  
 28 No. 57 at 6), less 2.5 hours (*id.* at 5), and less 10.3 hours described above as excessive.

1 attorney fees of \$28,240<sup>3</sup> and \$525 in costs to be reasonable.

2 **III. CONCLUSION**

3 For the foregoing reasons, Plaintiffs' motion for attorney fees (Dkt. No. 46) is  
4 GRANTED in part. Defendant is ORDERED to pay Plaintiffs' attorney fees of \$28,240 and  
5 costs of \$525.

6 DATED this 15th day of October 2020.

7  
8  
9  
10   
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

10 John C. Coughenour  
11 UNITED STATES DISTRICT JUDGE

26 \_\_\_\_\_  
25 <sup>3</sup> This figure is derived as follows: \$30,795 (Dkt. No. 48-1 at 7), plus \$1,987.50 (Dkt. No.  
26 57 at 6), less \$937.50 (*id.* at 5), and less \$3,605 described above as excessive.